

# Akin Gump

STRAUSS HAUER & FELD LLP

MELISSA L. LAURENZA  
202.887.4251/fax: 1.202.887.4288  
mlaurenza@akingump.com

May 30, 2013

Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 6734

Dear Mr. Herman:

We are submitting this letter on behalf of David Herro in response to the complaint ("Complaint") designated as Matter Under Review ("MUR") 6734 by the Federal Election Commission ("Commission") which names him as a respondent. As discussed in more detail below, Mr. Herro unknowingly exceeded his biennial contribution limit for the 2011-12 cycle. If the Commission determines, after a review of the facts and information supplied herein, that formal proceedings are necessary to resolve this matter, we request that the Commission's alternative dispute resolution process or fast track resolution process be utilized to do so. Otherwise, we respectfully request the Commission take no action against Mr. Herro and dismiss this matter.

## COMPLAINT

On May 9, 2013, the Commission received the complaint from Melanie Sloan, on behalf of Citizens for Responsibility and Ethics in Washington, and Paul Ryan, on behalf of the Campaign Legal Center (collectively the "Complainants"). The complaint was received by Mr. Herro on May 18, 2013.

The Complaint alleges that Mr. Herro contributed more than the biennial aggregate limit of \$46,200 to federal candidates during the 2011-2012 election cycle. The Complaint further alleges that Mr. Herro made contributions to candidates totaling \$62,300. Attached to the Complaint was a copy of a Huffington Post article dated May 3, 2013. The Complainant offered no additional supporting information regarding contributions made by Mr. Herro or the other respondents.

Anthony Herman  
May 30, 2013  
Page 2

## **LAW**

The Federal Election Campaign Act and accompanying Commission regulations prohibit an individual from contributing more than \$46,200 to all candidates for federal office and \$70,800 to all other political committees during the period January 1, 2011 through December 31, 2012. 2 U.S.C. § 441a(a)(3)(A) and (B); 11 C.F.R. § 110.5(b)(1)(i) and (ii). The aggregate biennial contributions limits of 2 U.S.C. § 441a(a)(3) do not apply to donations made to the recount fund of a federal candidate, the federal account of a state party committee, or to a federal political party committee. *See* Advisory Opinions 2006-24 and 2009-04.

## **DISCUSSION**

Mr. Herro did not intentionally exceed his biennial contribution limit. He has taken corrective action to bring his contributions into compliance with the law.

### *Good Faith Efforts*

As a portfolio manager for an investment adviser that is highly regulated by the Investment Advisers Act of 1940, Mr. Herro's political contributions are subject to SEC Rule 206(4)-5 (the "Rule").<sup>1</sup> As part of his employer's Political Contributions Policy and Procedures, required pursuant to the Rule, Mr. Herro must submit all contributions that exceed \$150 for prior approval to the Harris Contributions Approval Committee. The policy does not, however, track contribution limits. Mr. Herro's contributions all received approval in compliance with the Harris policy.

Similar to other contributors mentioned in the Huffington Post article, Mr. Herro was not aware of the biennial contribution limits. While it may seem surprising to full-time political professionals that an individual could be unaware of the biennial contribution limits, it is common practice that potential contributors are only informed of contribution limits applicable to a particular recipient entity and at no time is a potential contributor informed that there are also aggregate contribution limits that are in effect. Standard disclaimers inform a contributor that: her contribution is not deductible for federal income tax purposes; her contribution will be

---

<sup>1</sup> Rule 206(4)-5 prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make political contributions to certain elected officials or candidates. The Rule was implemented to address pay to play practices by investment advisers.

Anthony Herman  
May 30, 2013  
Page 3

used for political purposes; only U.S. citizens and permanent residents may contribute; contributions from corporations are prohibited; and the recipient entity must use its best efforts to report a contributor's name, address, employer and occupation. Most disclaimers also include a maximum contribution amount as well as an attestation that the funds contributed are not being provided by another person or entity.

For a contributor seeking to comply with complex campaign finance laws, it would appear that the multitude of disclaimers on solicitations cover the universe of laws governing a contribution. However, contributors are not typically informed of the additional biennial aggregate limitations at the time of their contribution.

In all material respects, Mr. Herro complied with the contribution limits required under 11 C.F.R. § 110.1 and did not exceed the limits to individual candidates or other political committees. In addition, it should be noted that all of Mr. Herro's contributions were made in his name and appropriately attributed to him.

#### *Corrective Action*

According to our review and provided for your reference, Mr. Herro made contributions aggregating \$62,300 to federal candidates and \$118,540 to federal political party committees and other political committees. Upon receipt of the Complaint, Mr. Herro immediately contacted counsel and directed counsel to rectify the contributions. On Mr. Herro's behalf, counsel sent certified letters requesting refunds to nine committees, including candidate committees and other political committees. Although the Complaint only alleges that Mr. Herro exceeded his biennial limits to candidates, he has also taken steps to correct contributions made to political party committees and other committees for which he may have exceeded the biennial contribution limits.

#### *Conclusion*

As this submission demonstrates, as soon as Mr. Herro received the Complaint, he took immediate action and retained outside counsel to identify and remedy the excessive contributions. Going forward, Mr. Herro will be using a spreadsheet to track his contributions to ensure that he does not inadvertently exceed his limits again.

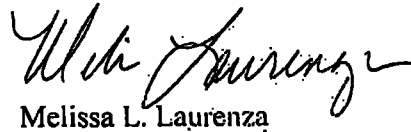
Mr. Herro is prepared to fully cooperate with the Commission to quickly and fairly resolve any outstanding issues in connection with this matter. Given the fact that Mr. Herro is taking appropriate steps to correct his mistakes and he did not intentionally violate the law, he

Anthony Herman  
May 30, 2013  
Page 4

respectfully requests that the Commission take no action and dismiss this matter. If formal proceedings are required to resolve this matter, Mr. Herro requests the Commission's alternative dispute resolution or fast track resolution process.

We are available at your convenience to answer any additional questions or concerns.

Respectfully submitted,

  
Melissa L. Laurenza